

live environment for a length of time sufficient to find initial defects) of the software."²⁷⁵ In fact, the Bellcore study specifically recommended that the Commission "[e]xtend the time interval for introduction of [number portability] by 3 months."²⁷⁶ Our extension of Phase I, in combination with our conclusion that carriers need provide portability only in requested switches,²⁷⁷ also allows carriers the flexibility to introduce portability more gradually, beginning with a subset of switches within the MSA.²⁷⁸

85. We deny the petitions to extend the deployment deadlines for all markets or otherwise provide wireline carriers greater flexibility in the schedule to implement long-term number portability.²⁷⁹ Although we conclude that initial implementation of this new number portability technology may require additional time, we are not persuaded that implementation in subsequent phases, after the technology has already been tested and installed in the initial markets, need be delayed to the extent requested by some petitioners. We find on the basis of the record in this proceeding that the implementation schedule as revised in this First Reconsideration Order is reasonable, and that granting any further delay of the schedule at this time is premature and unnecessary, especially because there is still approximately one year before LECs must complete deployment for the earliest phase. Petitioners have only speculated that unpredictable events may, at some point in the future, generally delay implementation, and have not shown that a specific factor will render the later schedule impossible to meet for any particular reason, much less for any particular LEC.

86. For example, despite NYNEX's vague claim that switch vendors cannot meet current workloads,²⁸⁰ no party has submitted any evidence refuting the specific vendor representations cited in the First Report & Order that vendors will be able to begin providing software for at least one long-term number portability method around mid-1997.²⁸¹ Indeed, GTE admits that it "has no reason to doubt that [the switch vendors Lucent, Northern Telecom, Siemens, and Ericsson] can meet their commitments" to "begin supplying LRN

²⁷⁵ SBC February 19, 1997 Ex Parte Filing at att. at 1.

²⁷⁶ Id. at att. at 2.

²⁷⁷ See supra ¶ 60.

²⁷⁸ SBC February 19, 1997 Ex Parte Filing at att. at 3.

²⁷⁹ See, e.g., U S West Petition at 2-3; SBC Petition at 11; Bell Atlantic Reply at 10; Pacific, et al., February 24, 1997 Ex Parte Filing at 6.

²⁸⁰ NYNEX Petition at 8-9.

²⁸¹ First Report & Order, 11 FCC Rcd at 8393.

software in early-to-mid 1997."²⁸² It is our understanding that the switch vendors Lucent and Nortel are still on schedule to provide LRN software by mid-1997.²⁸³

87. NYNEX also claims that the time estimated for software upgrades does not account for the fact that most upgrades will take place on weekends in order to minimize system disruptions, and generally alleges that "[t]here are probably not enough weekends" to complete deployment according to the schedule.²⁸⁴ NYNEX fails, however, to specify the additional time that, according to its estimate, would be necessary to complete the necessary upgrades. Similarly, GTE claims generally that more time is necessary to install the software for long-term number portability in all switches and remove transitional number portability capabilities, but does not estimate the additional time it believes it would need.²⁸⁵ GTE also claims in general terms that the schedule does not accurately reflect the time needed to modify vendor software if state commissions dictate inconsistent rate centers, but does not explain to what extent the rate centers are inconsistent and thus need modified software, nor does it show that a specific amount of additional time will be needed.²⁸⁶

88. Petitioners' arguments are even more speculative given that their implementation obligations are likely to be significantly lighter than they assume, because, as we discuss above, LECs are required to deploy number portability only in switches for which they receive requests for number portability capability.²⁸⁷ Moreover, even if the problems identified by petitioners do in fact develop, in our First Report & Order we established a procedure for LECs to obtain an extension of the deployment deadlines as necessary, and delegated authority to the Chief, Common Carrier Bureau, to monitor the progress of number portability implementation.²⁸⁸

²⁸² GTE Petition at 4.

²⁸³ Comm. Daily, vol. 17, no. 15, Telephony Section, Jan. 23, 1997 (Lucent has provided LRN software to Ameritech for testing); Nortel Ex Parte Presentation at 5, CC Docket 95-116, filed Jan. 27, 1997 (Nortel January 27, 1997 Ex Parte Filing) (Nortel will make LRN software available in the third quarter of 1997).

²⁸⁴ NYNEX Petition at 8-9.

²⁸⁵ GTE Petition at 5.

²⁸⁶ Id. at 7.

²⁸⁷ See supra ¶ 60.

²⁸⁸ First Report & Order, 11 FCC Rcd at 8393.

89. In addition, contrary to petitioners' claims,²⁸⁹ the schedule set forth in the First Report & Order did allow time for factors such as the need to modify OSS (e.g., ordering and billing systems) and the need to upgrade the number portability-specific and the generic switch software. We noted in the First Report & Order that we based the schedule largely on state commission deployment schedules.²⁹⁰ State commissions and workshops, organized under their auspices and composed of industry representatives, have been and still are working to resolve deployment issues and many of the associated issues that petitioners now claim warrant delay.²⁹¹ While studying these issues in detail, those states that established deployment schedules prior to our First Report & Order nonetheless concluded that deployment could commence in certain MSAs in those states by mid-1997.²⁹² Moreover, since October, 1993, the industry, under the auspices of the Number Portability Workshop of the Industry Numbering Committee (INC), has been "assess[ing] the technical feasibility and implementation requirements, impacts, and attributes of number portability," including the factors identified by petitioners.²⁹³ We conclude that state commissions were well aware of the concurrent need to resolve associated issues such as modification of OSS, and allowed time to resolve these associated issues when setting their long-term number portability implementation schedules. While the First Report & Order did not expressly consider how much time is necessary to modify OSS and to upgrade software, the schedule the Commission adopted relies upon the prior work and expertise of the state commissions in establishing those state implementation schedules. At any rate, the extensions of Phases I and II, as discussed above, should alleviate any potential concerns about the sufficiency of time for modifying OSS and upgrading switch software.

90. We have concluded that a modest extension of the deployment schedule for Phase I (and Phase II) markets is warranted to allow more time for testing and modifications to be made when local number portability is first implemented. We do not believe, however,

²⁸⁹ See, e.g., BellSouth Petition at 11-13; NYNEX Petition at 7-9; GTE Petition at 4-6; CBT Comments at 2-3; Pacific Comments at 4.

²⁹⁰ See First Report & Order, 11 FCC Rcd at 8362-65, 8392.

²⁹¹ For example, the Maryland and Illinois state commissions throughout 1996 studied issues associated with long-term number portability such as operations, switch requirements, SCP requirements, technical strategies, billing and rating, operator services, and SMS database system requirements and testing. MD LNP Consortium October 1996 Report at 15-19; Staff of the Public Service Commission of Maryland, Commission's Investigation into Long Term Solutions to Number Portability in Maryland: Second Quarterly Report of the Maryland Local Number Portability Consortium, Case No. 8704, at 6-12 (rel. Apr. 1996) (MD LNP Consortium April 1996 Report); AT&T Ex Parte Presentation at 13, CC Docket No. 95-116, filed Feb. 6, 1996 (AT&T February 6, 1996 Ex Parte Filing); see also First Report & Order, 11 FCC Rcd at 8364.

²⁹² See First Report & Order, 11 FCC Rcd at 8362-65, 8392.

²⁹³ Industry Carriers Compatibility Forum (ICCF), INC Report on Number Portability, July 11, 1996, at 7. Among the technical considerations that the INC has been studying are impact of implementation of number portability on switches and operations systems. Id. at 36-38.

that speculative and unspecified concerns about possible future technical concerns are sufficient to justify an across-the-board delay in implementing number portability in view of the adverse effects of delay on competition in local markets. The Commission found in the First Report & Order that number portability is essential to effective facilities-based competition in the provision of local exchange services.²⁹⁴ Extending the schedule now for deployment of long-term number portability, beyond the modifications adopted in this First Reconsideration Order, based on unsubstantiated concerns will thus hamper the development of that competition.²⁹⁵ Such an extension, moreover, would conflict with the 1996 Act's intent to open monopoly local telecommunications markets to competition as soon as possible.²⁹⁶

91. Moreover, we are not persuaded by the argument that we should delay the implementation schedule to account for problems that some other LECs may experience, due to differences in LEC networks that may prevent them from deploying number portability at the same speed.²⁹⁷ We believe that Congress, in requiring the provision of number portability "to the extent technically feasible," did not intend for LECs that are capable of providing number portability according to our deployment schedule to delay deployment on the grounds that some other LECs may encounter technical obstacles in adapting their networks.²⁹⁸ We recognize, as Bell Atlantic points out, that the BOCs were permitted to develop and deploy equal access pursuant to a more relaxed schedule.²⁹⁹ The BOCs, however, did not have a statutory mandate to deploy equal access as soon as it was technically feasible to do so, and no party has shown that the schedule established by the Modification of Final Judgment (MFJ) for deployment of equal access could not have been accelerated.

92. Furthermore, we find it unnecessary to act on GTE's request that we clarify that LECs may obtain a waiver if they cannot meet the schedule for reasons beyond their

²⁹⁴ First Report & Order, 11 FCC Rcd at 8367.

²⁹⁵ See TRA Late-Filed Comments at 7-8.

²⁹⁶ See S. Conf. Rep. No. 230, 104th Cong., 2d Sess. 1 (1996); 141 Cong. Rec. S7880, S7984 (daily ed. June 7, 1995) (statements of Sens. Pressler and Hollings).

²⁹⁷ See GTE Opposition at 13; USTA Reply at 9-10; BellSouth Petition at 11. Regarding CBT's argument that small and mid-size LECs located in the 100 largest MSAs have more limited resources to upgrade their networks than the BOCs, we note that the deployment schedule already eases the burden on those LECs by starting with the more populous markets, in which the incumbent LEC is more likely to be a large carrier; in addition, small LECs' concerns are further relieved by our conclusion, as set forth above, that portability need be deployed only in requested switches. See supra ¶ 60; CBT Comments at 3-4.

²⁹⁸ See 47 U.S.C. § 251(b). See also Time Warner Comments at 8-9 (arguing against granting a waiver if another carrier facing similar technical challenges (e.g., upgrading similar generic software on similar switches) has met the deadlines).

²⁹⁹ See Bell Atlantic Reply at 9.

control. The waiver procedure established in the First Report & Order for extending deployment deadlines as necessary provides an effective vehicle for addressing any problems in implementing number portability that LECs can document.³⁰⁰ We note that carriers may file petitions for waiver of the deployment schedule more than 60 days in advance of an implementation deadline, and thus receive relief earlier, if they are able to present substantial, credible evidence at that time establishing their inability to comply with our deadlines.³⁰¹

93. We reject USTA's proposal to give every state commission and/or workshop the authority to extend independently our deployment deadlines according to their assessments of the level of local competition in an area. As set forth above, we require carriers to identify the switches in which they desire number portability capability well before the deadline for deployment in a particular MSA.³⁰² We find that this requirement will enable LECs to deploy number portability in areas in which local competition is likely to develop at an early stage, while relieving LECs of the obligation to install the capability in areas that competitive LECs have no initial interest in serving.³⁰³ This requirement, in our view, addresses USTA's concerns by striking a reasonable balance between a LEC's interest in avoiding unnecessary switch upgrades, and a competitive LEC's interest in having assurances that number portability will be available in areas where it plans to compete to serve existing LEC customers.

94. We decline to expedite the Chicago trial, as requested by NYNEX.³⁰⁴ The First Report & Order scheduled the completion date for the Chicago trial for as early as appeared reasonably possible at that time. Given the record before us now, we conclude that it would not be possible to accelerate the commencement of that trial.³⁰⁵ Moreover, we agree with the

³⁰⁰ In particular, if problems necessitating delay do arise, the Chief of the Common Carrier Bureau may waive or stay any of the dates in the implementation schedule, as the Chief determines is necessary to ensure the efficient development of number portability, for a period not to exceed nine months. In the event a carrier is unable to meet our deadlines for implementing a long-term number portability method, it may file with us, at least 60 days in advance of the deadline, a petition to extend the time by which implementation in its network will be completed. First Report & Order, 11 FCC Rcd at 8397. See ALTS Opposition at 6 n.7 (arguing that incumbent LECs should try to settle their claims with carriers and vendors and develop a record before challenging our schedule); Sprint Opposition at 13-14.

³⁰¹ See First Report & Order, 11 FCC Rcd at 8397; supra ¶ 82.

³⁰² See supra ¶ 60.

³⁰³ See supra ¶ 59.

³⁰⁴ NYNEX Petition at 12; GTE Opposition at 13.

³⁰⁵ Midwest LNP L.L.C. February 27, 1997 Ex Parte Filing at 1-2.

Chicago trial participants that it would be inappropriate to shorten or delete any of the planned testing.³⁰⁶

95. We also decline to order additional field tests, as requested by NYNEX.³⁰⁷ The requirement that there be a field trial in Chicago is only intended to ensure that at least one field trial is held to identify technical problems in advance of widespread deployment, which will provide all carriers, as well as the Commission, with information on implementation. All carriers will have an opportunity to monitor testing in Chicago and evaluate the results of the testing on an ongoing basis. We find, moreover, that LECs currently have access to additional information concerning the impact of number portability on their systems, because many LECs are, and have been for some time, analyzing extensively implementation and inter-carrier OSS impact of number portability under the auspices of state and industry fora.³⁰⁸ As we stated in the First Report & Order, we do not routinely schedule field trials in rulemaking proceedings; our requiring a field trial in the Chicago MSA is an exceptional step that we adopted to safeguard against any risk to the public switched telephone network.³⁰⁹ The need for any further trials should be determined by the industry.

96. To the extent that other networks differ in design or switch use or other relevant variables, we do not preclude the testing of either software or hardware in other areas or by other carriers, either contemporaneously with the Chicago trial or even before that trial begins.³¹⁰ Indeed, we encourage carriers to test portability within their own networks as early as possible.³¹¹ For example, Bell Atlantic plans to do "first office application" testing in

³⁰⁶ Id. at 2.

³⁰⁷ NYNEX Petition at 12.

³⁰⁸ See NEXTLINK Opposition at 3-4; MD LNP Consortium October 1996 Report at 15-19; MD LNP Consortium April 1996 Report at 6-12; AT&T February 6, 1996 Ex Parte Filing at 13; First Report & Order, 11 FCC Rcd at 8364.

³⁰⁹ First Report & Order, 11 FCC Rcd at 8394.

³¹⁰ See ICG Comments at 6-7.

³¹¹ We note that U S West's argument on whether the deployment schedule accounts for sufficient time for carrier-specific testing is internally inconsistent. U S West has made no showing that switch vendors will not release number portability software in time for U S West to do its own first office testing; rather, it has only alleged vaguely that vendors "are generally reluctant to provide additional early software releases" because they prefer not to have multiple carriers test, and find problems in, "the same early-release software." U S West Reply at att. at 9. If, however, the software that U S West purchases is the same as that being tested in the Chicago trial, then U S West should be able to rely largely on the ongoing results of the Chicago trial. Since U S West claims that the software to be tested in Chicago differs from the software it will use, there appears to be no reason for the software vendors to refuse to release different software for first office testing so that U S West may do testing in its own network contemporaneously with the Chicago trial. Id. at 3.

Gaithersburg, Maryland, from July 15, 1997, to August 30, 1997.³¹² The Gaithersburg test, therefore, will have been completed seven months before Bell Atlantic's March 31, 1998, deadline to complete implementation in Philadelphia, the market in which it must deploy long-term number portability in Phase I under our revised schedule. In any event, carriers should have the opportunity to perform their own testing, including on "live traffic," well before the date by which they must request any waiver of the Phase I implementation requirements.

97. We also decline to adopt NYNEX's proposal to deploy portability in smaller MSAs instead of the largest ones during Phase I of the deployment schedule.³¹³ At this time, there is only speculation that starting with the most populous MSAs will result in technical problems. Indeed, carriers are further ahead in preparing for number portability in many of the larger MSAs than in the smaller ones; for example, several state commissions that had addressed the issue of number portability before issuance of the First Report & Order had ordered that deployment begin in several major cities that are currently in Phases I or II of our schedule.³¹⁴ Therefore, switching the deadlines of those larger MSAs with other, smaller MSAs now would, at a minimum, disrupt planning by competitive LECs and state commissions in those jurisdictions. Moreover, our three-month extension of the end date of Phase I, in combination with our conclusion that carriers need provide portability only in requested switches,³¹⁵ will serve much the same purpose as NYNEX's request by allowing carriers the flexibility to begin deployment in a subset of switches within each of the Phase I MSAs and gradually increase coverage over the six-month period. In addition, we do not prohibit, but rather encourage, carriers to take whatever additional actions they believe are necessary to safeguard their networks, including testing deployment of portability in one of their smaller MSAs before or during Phase I of our deployment schedule. For example, Bell Atlantic is testing number portability in the smaller market of Gaithersburg, MD before Phase I.³¹⁶

³¹² MD LNP Consortium October 1996 Report at app. 3 at att. 3. A "first office application" is an initial test of new technology, performed in a limited area, to find and eliminate bugs before widespread deployment.

³¹³ See NYNEX Opposition at 3 & n.10; NYNEX Reply at 7-9.

³¹⁴ After a first office application in Gaithersburg, Baltimore and the Maryland portion of the Washington, DC LATA are first on Maryland's deployment schedule. MD LNP Consortium October 1996 Report at 3, app. 3 at att. 3; MD LNP Consortium April 1996 Report at 40. The Georgia workshop scheduled initial implementation in Atlanta. BellSouth Ex Parte Presentation at 4, CC Docket No. 95-116, filed Nov. 1, 1996 (BellSouth November 1, 1996 Ex Parte Filing). The Chicago LATA was scheduled for initial deployment in Illinois. Ameritech Further Comments at 8, CC Docket No. 95-116, filed Mar. 29, 1996.

³¹⁵ See supra ¶ 60.

³¹⁶ MD LNP Consortium October 1996 Report at app. 3 at att. 3.

98. We also deny NYNEX's request that we explicitly encourage states to be flexible in opting out of the regional database or choosing to construct joint databases, or to work with less active neighboring states to establish regional databases.³¹⁷ We find that the First Report & Order allows sufficient flexibility for states to opt out of the regional databases.³¹⁸ In addition, NYNEX's concern that the NANC would not resolve the database issues in time for carriers to meet the deployment schedule is now largely moot, given the recent activities of the NANC. The NANC has committed to making its final recommendations to the Commission on the database system by May 1, 1997.³¹⁹ The NANC's working groups and task forces relating to number portability are already organized and holding regular meetings to resolve the database issues.³²⁰ The Local Number Portability Administration Selection Working Group projects that all seven regional databases will be ready for testing on dates ranging from April 18, 1997, to July 1, 1997, and will be ready to support number portability deployment on or before October 1, 1997, in accordance with the deployment schedule set forth in the First Report & Order.³²¹

99. Finally, we clarify that the first performance criterion, that any method "support existing network services, features, and capabilities," refers only to services existing at the time of the First Report & Order. We caution LECs that problems in implementing their chosen number portability method due to modifications necessitated by the introduction of a new service or technology will not justify a delay of the deployment schedule.³²² We decline, however, specifically to prohibit the introduction of any new service that is incompatible with LRN, as the First Report & Order did not adopt LRN or mandate use of any specific long-term number portability method.³²³

³¹⁷ NYNEX Petition at 11-12.

³¹⁸ See also BellSouth November 1, 1996 Ex Parte Filing at 4 (Georgia and Florida are working together to develop a regional database).

³¹⁹ NANC Timeline at 1.

³²⁰ LNPA Selection Working Group February 26, 1997 Status Report at 1; see also LNPA Selection Working Group December 2, 1996 Status Report at 7.

³²¹ Id. See also NANC January 8, 1997 State NPAC/SMS Status at 1-5.

³²² See MCI Reply at 7-8.

³²³ First Report & Order, 11 FCC Rcd at 8377.

4. Acceleration of Implementation Schedule

100. Pleadings. Several competitive LECs urge us to accelerate the deployment schedule in smaller markets.³²⁴ ACSI contends that the present schedule incorrectly assumes larger markets will experience competition first. ACSI claims that in fact many competitors are focusing on MSAs beyond the largest 50.³²⁵ Consequently, accelerating the deployment of number portability in those smaller markets would promote competition in all markets and treat competitors more equally regardless of the size of market they are entering.³²⁶ ACSI proposes that the schedule for the 100 largest markets be accelerated so that all BOCs implement number portability "according to roughly the same schedule as a function of population served."³²⁷ ACSI also proposes requiring non-BOC incumbent LECs to deploy portability in their largest market in the fourth quarter of 1997, or, at the latest, the first quarter of 1998.³²⁸ In the alternative, ACSI urges us to allow carriers with "operational networks in the 100 largest MSAs and the authority to provide local exchange services" to request, beginning July 1, 1997, the deployment of number portability on a specified date six or more months in the future.³²⁹ ACSI would place upon an incumbent LEC the burden of proving that it cannot provide number portability, and proposing an alternative date for implementation no more than three months later than the date requested.³³⁰ ALTS agrees that incumbent LECs should be required to implement portability in a region before the scheduled implementation date for that region, if the incumbent LEC is able to do so.³³¹

³²⁴ ACSI Petition at 3, 7-12; KMC Petition at 2-3, 5-13. See also ICG Comments. ACSI adds that the 1996 Act is predicated on promoting competition without reference to the size of the market. ACSI Petition at 11. KMC argues that we could not have intended to foreclose number portability in smaller markets where "meaningful competition" exists. KMC Petition at 7.

³²⁵ ACSI Petition at 9, 11.

³²⁶ Id.

³²⁷ Id. at 10 & n.18. See also ICG Comments at 4. ACSI submits a proposed schedule under which certain specific MSAs in the 100 largest MSAs would be deployed earlier. ACSI Petition at att. A. ACSI also suggests that the implementation date of the Fort Worth MSA be accelerated to coincide with that of Dallas so competing carriers can cover the entire Dallas-Fort Worth area. Id. at 10 n.16. ICG expands on this idea to recommend that all "consolidated MSAs," as determined by the Rand McNally Major Trading Area definitions (e.g., Cleveland and Dayton, Ohio) be deployed at the earlier of the two relevant MSAs' implementation deadlines. ICG Comments at 3-4 & n.1.

³²⁸ ACSI Petition at 10.

³²⁹ Id. at 12. See also ICG Comments at 4.

³³⁰ ACSI Petition at 12. ACSI adds that its proposal imposes no greater burden on any incumbent LEC than the burden the two BOCs with the largest implementation burden, Bell Atlantic and Pacific, have under the deployment schedule in the First Report & Order. Id. at 8-9.

³³¹ ALTS Opposition at 6; see also ACSI Petition at 3.

101. For markets outside the 100 largest MSAs, KMC contends that we should require LECs to accept bona fide requests for deployment of portability, after January 31, 1997, and to require implementation of such requests within six months.³³² Alternatively, KMC urges us to require all LECs immediately to accept bona fide requests for markets outside the 100 largest MSAs, and to satisfy such requests within 24 months, unless the LEC can prove technical infeasibility.³³³ Another option presented by KMC and ACSI is to permit carriers to submit requests for markets outside the 100 largest MSAs as early as July 1, 1998, so that implementation of these requests can begin immediately upon completion of deployment in the 100 largest MSAs.³³⁴ NEXTLINK urges us to accept requests earlier than the First Report & Order allows for the provision of number portability for markets outside the 100 largest MSAs, consult with the relevant state commission regarding the extent of competition in that requested market, and grant the request if there is "sufficient evidence" of competition.³³⁵ NEXTLINK contends that accelerating the schedule will not be overly burdensome because incumbent LECs may still seek a waiver.³³⁶

102. Several BOCs, GTE, USTA, and ALLTEL oppose accelerating the deployment schedule for markets below the top 100 MSAs.³³⁷ BellSouth and GTE assert that accelerating deployment will impede the phased deployment and jeopardize carriers' ability to meet the

³³² KMC Petition at 6.

³³³ Id. at 10.

³³⁴ KMC Petition at 12; ACSI Petition at 10. See also ICG Comments at 4-5; MCI Reply at 6. ACSI adds that, in regions served by NYNEX, Southwestern Bell, and U S West, bona fide requests for markets outside the 100 largest MSAs should be permitted beginning April 1, 1998, since, under ACSI's proposed changes to the initial deployment schedule, those carriers would complete implementation for the markets among the 100 largest they serve by September 1998. ACSI Petition at 10 n.18. In addition, suggests ACSI, requests for markets outside the 100 largest MSAs served by a non-BOC incumbent LEC should be accepted six months before that LEC must complete implementation in the last scheduled MSA that it serves that is within the 100 largest MSAs. Id.

³³⁵ NEXTLINK Petition at 5-6. The determination of "sufficient evidence" of competition would consider whether the requesting carrier has a central office switch in the relevant MSA with assigned NXXs, has interconnected with the LEC operating the requested switch, and will itself provide number portability within the same time period. NEXTLINK Ex Parte Presentation at 4-5, CC Docket No. 95-116, filed Oct. 18, 1996 (NEXTLINK October 18, 1996 Ex Parte Filing). NEXTLINK specifically urges us to accept a request for accelerated deployment of portability in the Spokane MSA, asserting that U S West's obligations are disproportionately light compared with other BOCs. NEXTLINK Petition at 7 & n.4.

³³⁶ NEXTLINK Reply at 2-3.

³³⁷ NYNEX Opposition at 2; GTE Opposition at 11-12; ALLTEL Opposition at 2. Specifically, BellSouth, GTE, NYNEX, and USTA argue that sufficient switch software may not be available to support an accelerated schedule. BellSouth Opposition at 6; NYNEX Opposition at 2-3; GTE Opposition at 10-11; USTA Comments at 4. Similarly, NYNEX suggests that any schedule modification should reflect the NANC's ability to accomplish its responsibilities. NYNEX Opposition at 2-3; see also GTE Opposition at 13-14.

original schedule.³³⁸ GTE, USTA, Sprint, and Pacific argue that resources would be diverted from deployment in larger markets where competitors are more likely to be interested in entering.³³⁹ BellSouth asserts that, if we add new central offices to the schedule, then we should remove a corresponding number of central offices from the original schedule.³⁴⁰ BellSouth also suggests that, if we add new central offices to the schedule, then failure to implement any of those additional MSAs according to deadlines on the original schedule should not constitute a failure to meet a Section 271 checklist requirement.³⁴¹ In response to ACSI's claim that the Commission's schedule discriminates against smaller markets, GTE asserts that the phased schedule takes into account the differing levels of local exchange competition in different areas, the burden on carriers serving multiple regions, and the fact that more significant upgrades may be necessary for carriers operating in smaller areas.³⁴²

103. USTA supports KMC's recommendation that LECs be able to submit requests for deployment in markets outside the 100 largest MSAs earlier than January 1, 1999, but proposes that such requests be fulfilled on a negotiated timetable subject to the decisions of each state commission, instead of by December 1998, or within 24 months, as suggested by KMC.³⁴³ ALLTEL contends that accelerating the schedule will force carriers to file waivers or seek suspensions of implementation.³⁴⁴ ALLTEL argues, moreover, that smaller providers should not be required to invest in number portability technologies until they have been proven reliable in larger markets.³⁴⁵

104. Discussion. We deny the petitions for reconsideration that advocate: (1) accelerating deadlines for certain MSAs;³⁴⁶ (2) allowing carriers with operational networks in the 100 largest MSAs and the authority to provide local exchange service to request

³³⁸ BellSouth Opposition at 6; GTE Opposition at 10-11; see also NYNEX Opposition at 2.

³³⁹ GTE Opposition at 10; USTA Comments at 4; Sprint Opposition at 12; Pacific Comments at 2.

³⁴⁰ BellSouth Opposition at 6-7.

³⁴¹ Id. at 7.

³⁴² GTE Opposition at 10-11.

³⁴³ USTA Comments at 6-7. USTA proposes allowing each state commission and/or its workshop to evaluate evidence of local competition in areas within that state, and either accelerate or decelerate the schedule in those areas, as long as the "overall burden" is not increased. Id. at 4-6.

³⁴⁴ ALLTEL Opposition at 3. ALLTEL contends further that the present schedule does not prohibit competitors from using the Section 252 negotiation process to enter into number portability agreements prior to January 1999. Id.

³⁴⁵ Id. at 2-3. See also NTCA/OPASTCO Reply at 3-4.

³⁴⁶ See ACSI Petition at 9-12; ICG Comments at 3-4.

portability in any MSA in the 100 largest MSAs beginning July 1, 1997, and requiring LECs to fulfill such requests on a specified date six or more months in the future;³⁴⁷ (3) adding MSAs outside the largest 100 MSAs to the initial deployment schedule;³⁴⁸ or (4) combining the deadlines of consolidated MSAs.³⁴⁹ The current schedule is based on the projected availability of switch software,³⁵⁰ and recognizes the burden on carriers serving multiple regions and the fact that more significant upgrades may be necessary for carriers operating in smaller areas.³⁵¹ Petitioners have not made a showing that the necessary software, hardware, and other resources will be available earlier in areas originally scheduled for later deployment, or will be available in quantities sufficient to support deployment in additional areas, particularly in areas outside the 100 largest MSAs. If such hardware and software is not available for deployment early enough or in sufficient quantities to support deployment in additional areas, then accelerating deployment deadlines for smaller MSAs may divert these limited resources from deployment in other, larger MSAs, and thus delay deployment of number portability where a greater population might benefit from competition.³⁵²

105. For the reasons stated above, we also reject ACSI's request to require deployment in Phase I in certain additional markets in which the incumbent LECs are not BOCs. In addition, we continue to believe that non-BOC incumbent LECs, most of which have more limited resources than the BOCs, should have additional time to upgrade and test their networks.³⁵³ Moreover, we conclude above that LECs need deploy number portability in the 100 largest MSAs only in switches for which another carrier has made a specific request for the provision of portability.³⁵⁴ Requiring that additional MSAs be deployed in Phase I does not give sufficient notice to carriers or states to establish switch-requesting procedures in MSAs for which they had no previous notice that deployment was required in Phase I. We also decline to adopt USTA's proposal that state commissions be free to accelerate the deployment schedule. While we are sympathetic to the desires of some states to advance deployment where actual competitive interest exists, we conclude that the schedule adopted in

³⁴⁷ See ACSI Petition at 9-12; ALTS Opposition at 6; ICG Comments at 3-4.

³⁴⁸ See NEXTLINK Petition at 5-6.

³⁴⁹ See ICG Comments at 3-4 & n.1; ACSI Petition at 10 n.16.

³⁵⁰ See First Report & Order, 11 FCC Rcd at 8393-95; see also BellSouth Opposition at 6; GTE Opposition at 10-11; NYNEX Opposition at 2-3.

³⁵¹ See First Report & Order, 11 FCC Rcd at 8393-95; see also GTE Opposition at 10-11.

³⁵² See BellSouth Opposition at 6; GTE Opposition at 10; USTA Comments at 4; Sprint Opposition at 12; Pacific Comments at 2.

³⁵³ See CBT Comments at 3-4.

³⁵⁴ See supra ¶ 60.

the First Report & Order, as modified in this First Reconsideration Order, represents a reasonable balancing of competing interests, and carriers need to have certainty that these are the requirements with which they must comply. Our First Report & Order was silent on the issue of whether states could accelerate the deployment schedule. We therefore grandfather any state decisions to accelerate deployment for a particular market from one phase to an earlier phase that were adopted prior to release of this First Reconsideration Order.

106. We do not prohibit LECs from agreeing to accelerate implementation, either for specific MSAs or specific switches within MSAs. We find, however, that acceleration of our schedule is more properly determined by private agreements among carriers. Competitive LECs are free to negotiate with incumbent LECs for deployment of number portability ahead of our schedule.³⁵⁵ Moreover, to the extent that carriers agree to "swap" the implementation deadlines for specific MSAs or switches within MSAs, they can jointly file specific waiver petitions to do so.³⁵⁶

107. We grant in part the petitions of ACSI, KMC, and NEXTLINK to allow requests for deployment of number portability in areas outside the 100 largest MSAs to be submitted earlier than January 1, 1999. We therefore modify our rules to permit carriers to submit requests for deployment of number portability in areas outside the 100 largest MSAs at any time. We decline, however, to require that deployment be completed within six months of request for requests filed prior to January 1, 1999. This modification to our rules will benefit all parties, because receiving earlier notice to upgrade switches will likely ease a LEC's compliance burden and help to ensure that competing carriers will receive portability within the time requested. Finally, we clarify that, contrary to KMC and ACSI's view, our current schedule does not leave an implementation gap between December 31, 1998, and July 1, 1999, since implementation of requests for deployment of number portability in areas outside the 100 largest MSAs filed on or before January 1, 1999, will occur during the first six months of 1999. KMC and ACSI's suggestion that we permit requests for markets outside the 100 largest MSAs beginning July 1, 1998, and require fulfillment of those requests within six months, would actually require that those smaller markets be completed at the same time as the MSAs in the last phase of our deployment schedule, thus sharply increasing the burden on carriers during that phase.³⁵⁷

5. Exemptions for Rural and/or Smaller LECs

108. Pleadings. JSI, NECA, and NTCA/OPASTCO argue that requiring rural LECs to provide number portability where no competitor has requested it will burden rural LECs

³⁵⁵ See ALLTEL Opposition at 3.

³⁵⁶ See NEXTLINK Petition at 7-8 n.4.

³⁵⁷ See ACSI Petition at 10; KMC Petition at 12.

significantly without benefitting the public by increasing competition.³⁵⁸ NECA and NTCA/OPASTCO state that requiring rural LECs to provide portability absent such a request contravenes our intent to let the pace of competitive entry into local markets determine the need for number portability.³⁵⁹ NTCA/OPASTCO asserts that these small businesses do not have the resources to test portability technologies.³⁶⁰ GTE argues that the same concerns that prompted us to forego an implementation schedule for areas outside the 100 largest MSAs, *i.e.*, lack of imminent competition and the need for significant network upgrades, apply to smaller offices within the 100 largest MSAs.³⁶¹ JSI, NECA, and NTCA/OPASTCO contend that the need for such an exemption is apparent in Congress' Joint Explanatory Statement which states, "Duties imposed under new Section 251(b) make sense only in the context of a specific request from another telecommunications carrier" ³⁶²

109. JSI and NTCA/OPASTCO suggest that we exempt rural LECs operating within the 100 largest MSAs from complying with the implementation deadlines until receipt of a request for deployment.³⁶³ Several other parties agree with JSI and NTCA's suggestion, and would expand the exemption to include: (1) LECs with less than five percent of their subscribers in an MSA, or LECs with only 10 percent of their access lines within an MSA;³⁶⁴ (2) rural LECs with study areas that only partially overlap one of the 100 largest MSAs,³⁶⁵ or (3) any carrier with less than two percent of the nation's access lines.³⁶⁶ JSI further argues that we should not apply our deployment requirements to rural LECs until there is factual

³⁵⁸ JSI Petition at 9 (asserting that the cost of implementation in areas in which there is no competition will result in higher rates for consumers); NECA Petition at 3; NTCA/OPASTCO Petition at 3-4; NTCA/OPASTCO Reply at 1-4. See also USTA Comments at 2; ALLTEL Opposition at 4-5; Sprint Opposition at 13.

³⁵⁹ NECA Petition at 2; NTCA/OPASTCO Petition at 3.

³⁶⁰ NTCA/OPASTCO Reply at 4-5.

³⁶¹ GTE Petition at 9-10.

³⁶² JSI Petition at 3-5 (quoting S. Conf. Rep. No. 104-230, 104th Cong., 2d Sess. 121 (1996)); NTCA/OPASTCO Petition at 3 (same); NECA Petition at 3-4 (quoting H.R. Report 104-458, Joint Explanatory Statement of the Committee of Conference at 121).

³⁶³ JSI Petition at 7-8; NTCA/OPASTCO Petition at 2.

³⁶⁴ USTA Petition at 19. USTA argues that many LECs located within MSAs (1) do not provide service within the MSA, (2) serve a small percentage of the MSA, or (3) have operations within the MSA which constitute a small percentage of the LEC's total operations. Id. at 18.

³⁶⁵ NECA Petition at 2-3 (claiming that of the 115 rural LECs operating in the 100 largest MSAs, only four are completely contained within a top 100 MSA, and the remaining 111 overlap a top 100 MSA by only a small fraction of their total customer base); JSI Petition at 8.

³⁶⁶ ALLTEL Opposition at 5.

evidence that number portability is technologically feasible, and will not disproportionately burden rural LECs.³⁶⁷ GTE suggests that, if no competitors express an interest in entering the market, and the state commission does not object, smaller LECs should be allowed to present a waiver to us that, if approved, would exempt them from portability requirements until six months after a request is made.³⁶⁸ CBT suggests that we exempt from the implementation schedule carriers granted a suspension or modification of the number portability requirements under Section 251(f)(2) until the state commission removes the suspension.³⁶⁹

110. USTA urges us to exempt from the deployment schedule rural LECs that are exempt from interconnection requirements under Section 251(f).³⁷⁰ JSI goes further and argues that Section 251(f)(1) prohibits the imposition of number portability requirements on rural LECs because rural LECs are automatically exempt from the interconnection requirements of Section 251(c).³⁷¹ JSI states that this exemption from interconnection requirements permits us to impose number portability requirements upon rural LECs only to the extent it is technically feasible for rural LECs to provide portability without upgrading their networks to utilize databases, installing SS7 or AIN capabilities, or installing and furnishing functions requiring new switching software.³⁷² JSI adds that this exemption may be terminated only by a state commission.³⁷³ In addition, JSI argues, the Commission recognized in the First Report & Order that carriers meeting the 251(f) criteria may be exempt from number portability requirements.³⁷⁴

³⁶⁷ JSI Petition at 7. JSI argues that we have not justified expediting implementation for a rural LEC solely because it is located within a top 100 MSA. Id. at 6.

³⁶⁸ GTE Petition at 9. See also GTE Opposition at 15. GTE asserts that permitting these waivers would free LECs to devote resources to areas in which competition is more immediate. Id.

³⁶⁹ CBT Comments at 4.

³⁷⁰ USTA Comments at 3. USTA suggests that, should a state commission end the interconnection exemption for a particular rural provider, then the commission should determine that provider's deployment schedule. USTA argues that this is necessary to preserve state authority over the full range of interconnection issues affecting smaller and rural LECs. Id. at 3. See also Pacific Comments at 4 (claiming that implementation makes sense only in areas where interconnection has been requested).

³⁷¹ JSI Petition at 3-4.

³⁷² Id. at 3. See also NECA Petition at 3-4.

³⁷³ JSI Petition at 4.

³⁷⁴ Id. at 5 (citing First Report & Order, 11 FCC Rcd at 8396). But see USTA Comments at 2 (claiming that the Section 251(f)(1) exemption covers only Section 251(c) obligations, not Section 251(b) obligations); NTCA/OPASTCO Petition at 2 n.3 (same); ALLTEL Opposition at 4.

111. NTCA/OPASTCO claims that the First Report & Order's Final Regulatory Flexibility Analysis does not address the impact of the rules on small incumbent LECs, and is thus inconsistent with the Local Competition Order.³⁷⁵ NTCA/OPASTCO suggests that exempting rural LECs from number portability requirements absent a specific request would fulfill our responsibility under the Regulatory Flexibility Act.³⁷⁶

112. Time Warner and MCI oppose any "blanket waiver" of number portability requirements for smaller and/or rural LECs.³⁷⁷ MCI argues that such waivers will "lessen the likelihood" that competition will ever reach areas served by smaller and rural providers.³⁷⁸ MCI claims that a blanket waiver is unnecessary, because smaller and rural LECs can receive waivers under the statutory provision or under the procedure described in the First Report & Order.³⁷⁹ Time Warner argues that any blanket waiver, either for technical difficulties or for a carrier's smaller size, will be overly inclusive and result in unnecessary delay, and that carriers should have to file individually for waivers that demonstrate why they should be exempt from the number portability deployment schedule.³⁸⁰

113. Discussion. As set forth above, we grant the petitions to limit deployment of portability to those switches for which a competitor has expressed interest in deployment by concluding that LECs need only provide number portability within the 100 largest MSAs in switches for which another carrier has made a specific request for the provision of portability.³⁸¹ We find that this modification to our rules should address the concerns of parties that urge us to waive number portability requirements for rural and/or smaller LECs serving areas in the largest 100 MSAs until receipt of a request.³⁸²

³⁷⁵ NTCA/OPASTCO Petition at 4 & n.6.

³⁷⁶ Id. at 5.

³⁷⁷ Time Warner Comments at 7; MCI Opposition at 18. But see USTA Reply at 9 (protesting that recognizing that failure to receive an interconnection request constitutes "extraordinary circumstances beyond the LEC's control" justifying a waiver does not constitute a "blanket waiver").

³⁷⁸ MCI Opposition at 18-19. MCI argues, moreover, that once a small office receives a bona fide request, it should be required to deploy portability within one or two months, not six months as proposed by GTE. MCI Reply at 6 n.12. According to MCI, the LEC will already have deployed portability within the MSA, and, therefore, can deploy portability in a new office quickly. Id.

³⁷⁹ MCI Opposition at 18.

³⁸⁰ Time Warner Comments at 6-7.

³⁸¹ See supra ¶ 60.

³⁸² See JSI Petition at 7; NTCA/OPASTCO Petition at 3; NECA Petition at 2; GTE Petition at 9; NTCA/OPASTCO Reply at 1-2; ALLTEL Opposition at 4-5; USTA Petition at 18-19.

114. We deny the petitions that request a blanket waiver of our number portability requirements for rural and/or smaller LECs that receive a request for deployment in one of their switches. We find that such a blanket waiver is unnecessary and may hamper the development of competition in areas served by smaller and rural LECs that competing carriers want to enter.³⁸³ If, as petitioners allege, competition is not imminent in the areas covered by rural/smaller LEC switches,³⁸⁴ then the rural or smaller LEC will not receive requests from competing carriers to implement portability, and thus will not need to expend its resources, until competition actually develops in its service area. In addition, by that time extensive non-carrier-specific testing will likely have been done, and carriers' testing costs will likely be smaller.³⁸⁵

115. Further, to the extent that portability is requested in a rural or smaller LEC's switch, and that LEC has difficulty complying with the request, it has two avenues for relief. Pursuant to the First Report & Order, a LEC may apply for an extension of time on the basis of extraordinary circumstances beyond its control that prevent it from complying with the Commission's deployment schedule.³⁸⁶ In addition, under Section 251(f)(2), a LEC with fewer than two percent of the nation's subscriber lines installed in the aggregate nationwide (an "eligible LEC") may petition the appropriate state commission for suspension or modification of the requirements of Section 251(b).³⁸⁷ The state commission is required to act on the petition within 180 days.³⁸⁸ We believe eligible LECs will have sufficient time to obtain any appropriate Section 251(f)(2) relief as provided by the statute, especially since the

³⁸³ See MCI Opposition at 18-19. Moreover, the Commission recognized in the First Report & Order that some smaller LECs may face greater burdens in upgrading their networks to implement number portability. The phased deployment schedule also recognizes that carriers in areas outside the 100 largest MSAs are more likely to be smaller or rural LECs, and thus requires that portability be deployed earlier in the more populous MSAs, and deployed in smaller markets only upon receipt of a specific request. First Report & Order, 11 FCC Rcd at 8393-95.

³⁸⁴ See GTE Petition at 8; GTE Opposition at 15; JSI Petition at 9; NTCA/OPASTCO Reply at 2-4.

³⁸⁵ NTCA/OPASTCO Reply at 4-5.

³⁸⁶ First Report & Order, 11 FCC Rcd at 8397.

³⁸⁷ The state commission shall grant such petition to the extent that, and for as long as, the state commission determines that such suspension or modification: (A) is necessary to avoid a significant adverse economic impact on end users, to avoid imposing an unduly economically burdensome requirement, or to avoid imposing a technically infeasible requirement; and (B) is consistent with the public interest, convenience and necessity. 47 U.S.C. § 251(f)(2).

³⁸⁸ Id.

state commission can suspend the application of our deployment deadlines to that LEC while it is considering the LEC's petition for suspension or modification of our requirements.³⁸⁹

116. If, however, a competitor is interested in number portability in a particular switch operated by a rural or smaller LEC, and the LEC cannot demonstrate extraordinary circumstances justifying an extension of our deployment requirements, and the state commission denies a Section 251(f)(2) request for suspension or modification, we find no statutory basis for excusing such a LEC from its obligations to provide number portability.³⁹⁰ Rather, Congress established a specific procedure under which state commissions are empowered to make case-by-case decisions on the application of number portability requirements to eligible LECs pursuant to Section 251(f)(2), based on the particular facts and circumstances presented. Eligible LECs that have been granted suspension or modification of number portability requirements under Section 251(f)(2) are not bound by our implementation schedule until the state commission removes the suspension.³⁹¹

117. The comments of some parties in this proceeding appear to reflect a misapprehension of the scope of Section 251(f).³⁹² Sections 251(f)(1) and 251(f)(2) apply to different classes of carriers, and provide different types of relief. Section 251(f)(1) applies only to rural LECs, and offers an exemption only from the requirements of Section 251(c). In contrast, Section 251(f)(2) applies to all LECs with less than two percent of the nation's subscriber lines. In addition, Section 251(f)(2) establishes a procedure for requesting suspension or modification of the requirements of Sections 251(b) and 251(c). Number portability is an obligation imposed by Section 251(b). Because Section 251(f)(1) does not exempt rural LECs from the requirements of Section 251(b), there is no exemption for rural

³⁸⁹ Section 251(f)(2) provides that "[t]he State commission shall act upon any petition filed under [Section 251(f)(2)] within 180 days after receiving such petition. Pending such action, the State commission may suspend enforcement of the requirement or requirements to which the petition applies with respect to the petitioning carrier or carriers." Id.

³⁹⁰ In addition, issuance of a blanket exemption in this proceeding would be inconsistent with the Local Competition Order, in which the Commission generally declined to adopt national rules regarding Section 251(f), or provide for different treatment of rural and smaller carriers. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15,499, 16,118-19 (1996), motion for stay of the FCC's rules pending judicial review denied, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, Order, 11 FCC Rcd 11754 (1996), partial stay granted, Iowa Utilities Board v. FCC, No. 96-3321, 1996 WL 589204 (8th Cir. 1996) (Local Competition Order).

³⁹¹ See CBT Comments at 4.

³⁹² See JSI Petition at 3. But see NTCA/OPASTCO Petition at 2 n.3 (claiming that the Commission incorrectly asserted in the First Report & Order that Section 251(f)(1) per se exempted rural LECs from number portability requirements).

LECs of their number portability obligations under Section 251(f)(1).³⁹³ The only statutory avenue for relief from the Section 251(b) requirements specifically for eligible LECs is to request suspension or modification of the number portability requirements under the procedure established by Section 251(f)(2).

118. The plain text of the statute refutes JSI's argument that Section 251(f)(1) exempts rural LECs from number portability requirements.³⁹⁴ JSI states that the Section 251(f)(1) exemption from interconnection requirements permits us to impose number portability requirements upon rural LECs only to the extent it is technically feasible for rural LECs to provide portability without having to upgrade their networks to utilize databases, install SS7 or AIN capabilities; or install and furnish functions requiring new switching software.³⁹⁵ JSI adds that this exemption may be terminated only by a state commission.³⁹⁶

119. Because Sections 251(b) and 251(c) are separate statutory mandates, the requirements of Section 251(b) apply to a rural LEC even if Section 251(f)(1) exempts such LECs from a concurrent Section 251(c) requirement. To interpret Section 251(f)(1) otherwise would undercut Section 251(b) and, in this case, would effectively preclude any provision of long-term number portability by rural LECs until termination of the Section 251(f)(1) exemption by a state commission. We find such an interpretation to be contrary to Congress's mandate that all LECs provide number portability, and Congress's exclusion of the Section 251(b) obligations, including the duty to provide number portability, from the Section 251(f)(1) exemption for rural LECs.

120. Moreover, under JSI's interpretation, the only carriers that would have to provide number portability would be incumbent LECs that are not exempt under Section 251(f)(1). Non-incumbent LECs, as well as rural incumbent LECs that are exempt under Section 251(f)(1), would not have to satisfy the requirements of Section 251(b) and, consequently, would not have to provide number portability. This directly contradicts Section 251(b)(2), which specifically requires "all local exchange carriers" to provide number portability.³⁹⁷ Section 251(c) sets forth "additional obligations" that apply only to incumbent LECs, whereas Section 251(b) sets forth obligations that apply to all LECs.

³⁹³ We note, however, that Section 251(f)(1) does exempt rural carriers from the duty to negotiate in good faith over the terms and conditions of agreements to fulfill the duties of Section 251(b), including number portability.

³⁹⁴ See JSI Petition at 3-4.

³⁹⁵ *Id.* at 3. USTA advocates, similarly, that any carrier that is exempt from the interconnection requirements under 47 U.S.C. § 251(f) should be automatically exempt from the implementation schedule. USTA Comments at 3; USTA Reply at 9.

³⁹⁶ JSI Petition at 4.

³⁹⁷ 47 U.S.C. § 251(b)(2).

121. Even if we were to agree with JSI's statutory interpretation that rural LECs that are exempt from the Section 251(c) requirements are also exempt from any requirements of Sections 251(b) and (c) that overlap, petitioners have not demonstrated that the Section 251(b) and (c) obligations in fact overlap. To provide long-term number portability under Section 251(b)(2), LECs obviously must install and use any necessary databases, SS7 or AIN capabilities, or switching software. Section 251(c), in contrast, requires incumbent LECs to provide unbundled access to network elements, including call-related databases.³⁹⁸ Number portability does not require any provision of unbundled access to these elements. Moreover, to provide number portability, carriers can interconnect either directly or indirectly as required under Section 251(a)(1).³⁹⁹ Section 251(c), in contrast, imposes an additional requirement on incumbent LECs to provide "equal" interconnection at "any technically feasible point within the carrier's network,"⁴⁰⁰ which a carrier does not need to provide number portability. Thus, Sections 251(a) and (b), not Section 251(c), require that carriers interconnect and install and use necessary network elements to provide number portability.⁴⁰¹ We therefore deny JSI and USTA's request to "automatically exempt" rural LECs from our number portability requirements to the extent that they are exempt from the requirements of Section 251(c) under the provisions of Section 251(f)(1).⁴⁰²

122. We also deny the requests that we clarify that smaller and/or rural LECs serving areas that only partially overlap one of the 100 largest MSAs need not deploy number portability until receipt of a bona fide request.⁴⁰³ We believe that, when determining whether a suspension or modification is necessary to avoid imposing an unduly economically burdensome requirement, pursuant to Section 251(f)(2), state commissions would likely consider whether an eligible LEC's presence in the MSA is truly de minimus and whether such a LEC is entitled to a suspension or modification of the number portability requirements on this basis.

³⁹⁸ See 47 U.S.C. § 251(c)(3).

³⁹⁹ See 47 U.S.C. § 251(a)(1). For example, a smaller rural carrier and a competing carrier might interconnect indirectly by both establishing direct connections with a third carrier and routing calls to each other through that third carrier. The smaller rural carrier could then provide portability by performing its own database queries and then routing the call to the competing carrier through that third carrier. Another option would be for the smaller rural LEC to contract with that third carrier to perform its queries and the necessary routing.

⁴⁰⁰ See 47 U.S.C. § 251(c)(2).

⁴⁰¹ Rural LECs are not exempt from Section 251(a) or (b) requirements under Section 251(f)(1). See 47 U.S.C. § 251(f)(1); Local Competition Order, 11 FCC Rcd at 15,991.

⁴⁰² See JSI Petition at 7; USTA Comments at 3.

⁴⁰³ See NECA Petition at 2-3; JSI Petition at 8; USTA Petition at 19.

123. Finally, NTCA/OPASTCO erroneously claims that the First Report & Order violates the Regulatory Flexibility Act (RFA) because its Final Regulatory Flexibility Analysis (FRFA) does not address the impact of our rules on small incumbent LECs, and is, therefore, inconsistent with the Local Competition Order.⁴⁰⁴ As we stated in the First Report & Order's FRFA, small incumbent LECs do not qualify as small businesses because they are dominant in their field of operation.⁴⁰⁵ The Local Competition Order's FRFA likewise set forth the Commission's view that small incumbent LECs are not subject to regulatory flexibility analyses because they are not small businesses due to their dominance in their field of operation.⁴⁰⁶ The Commission in that proceeding specifically stated that it was including small incumbent LECs in its FRFA only because two parties had especially questioned that conclusion in that proceeding's Initial Regulatory Flexibility Analysis (IRFA), and it wanted to "remove any possible issue of RFA compliance."⁴⁰⁷ In contrast, no party commented on the IRFA in this proceeding.⁴⁰⁸ We attach, nevertheless, as Appendix D a Supplemental Final Regulatory Flexibility Analysis that further explains our analysis of our rules' impact upon rural and smaller carriers and our basis for selecting the particular options that we have selected. This analysis takes into account NTCA/OPASTCO's specific claim raised in its petition for reconsideration, in order to "remove any possible issue of RFA compliance."⁴⁰⁹ We also note that our establishment of a procedure whereby number portability would only be deployed in requested switches effectively grants the relief sought by NTCA/OPASTCO, the sole petitioner on this issue.⁴¹⁰

6. Implementation Requirements for Intermediate (N-1) Carriers

124. Pleadings. Pacific urges us to require all intermediate (N-1) carriers, including interexchange carriers, to implement the capability to query number portability databases in order to route calls properly.⁴¹¹ Pacific expresses concern that, if an intermediate carrier has

⁴⁰⁴ See NTCA/OPASTCO Petition at 4 & n.6.

⁴⁰⁵ First Report & Order, 11 FCC Rcd at 8487.

⁴⁰⁶ Local Competition Order, 11 FCC Rcd at 16,145.

⁴⁰⁷ Id.

⁴⁰⁸ First Report & Order, 11 FCC Rcd at 8486.

⁴⁰⁹ Cf. Local Competition Order, 11 FCC Rcd at 16,145.

⁴¹⁰ NTCA/OPASTCO suggests that exempting rural LECs from number portability requirements absent a specific request would fulfill our responsibility under the Regulatory Flexibility Act. NTCA/OPASTCO Petition at 5.

⁴¹¹ Pacific Petition at 12-13. "N-1 carrier" refers to the carrier through which the call passes immediately before reaching the terminating service provider.

not implemented portability, an interLATA call will be routed to the original terminating LEC, which must then query the database and reroute the call, in violation of performance criterion four.⁴¹² Pacific urges us to clarify that the original terminating LEC will not be responsible for handling queries not performed by an intermediate carrier that lacks the capability to query number portability databases.⁴¹³ Pacific further asserts that requiring the original terminating LEC to query all interLATA and intraLATA calls will increase its implementation costs, and limit the ability of those LECs to meet the implementation schedule.⁴¹⁴ NYNEX asserts that granting Pacific's request will reduce the stress on the terminating LEC's signalling infrastructure by reducing that LEC's database queries.⁴¹⁵ NYNEX urges, in the alternative, that we confirm that terminating LECs may charge N-1 carriers for performing the query, where the N-1 carrier cannot or will not perform the query itself.⁴¹⁶ MCI claims that Pacific's request is unnecessary, since interexchange carriers already plan to deploy number portability as soon as possible.⁴¹⁷

125. Discussion. We deny Pacific's request that we require all N-1 carriers, including interexchange carriers, to meet the implementation schedule we established for LECs.⁴¹⁸ Such a requirement is not mandated by the 1996 Act, which subjects only LECs, not interexchange carriers engaged in the provision of interexchange service, to our number portability requirements.⁴¹⁹ Moreover, petitioners have not demonstrated a need for us to impose such requirements under our independent rulemaking authority under Sections 1, 2, and 4(i) of the Communications Act of 1934, as amended.⁴²⁰ In that regard, we are not

⁴¹² Id. The fourth performance criterion mandates that any long-term number portability method must not require telecommunications carriers to rely on databases, other network facilities, or services provided by other telecommunications carriers in order to route calls to the proper termination point. First Report & Order, 11 FCC Rcd at 8378.

⁴¹³ Pacific Petition at 13.

⁴¹⁴ Id.

⁴¹⁵ NYNEX Opposition at 3.

⁴¹⁶ Id. at 3-4 & n.13.

⁴¹⁷ MCI Opposition at 19. MCI claims that it, AT&T, Sprint, and other interexchange carriers have frequently announced their intentions to deploy portability in their networks as soon as it is available. MCI argues, moreover, that interexchange carriers are strongly motivated to deploy number portability because it would enable them to escape paying their current high LEC access charge rates by routing calls to competitive LECs that will likely offer terminating access at charges more closely related to costs. Id.

⁴¹⁸ See Pacific Petition at 13; NYNEX Opposition at 3.

⁴¹⁹ 47 U.S.C. 251(b)(2); see also First Report & Order, 11 FCC Rcd at 8453.

⁴²⁰ 47 U.S.C. §§ 151, 152, 154(i).

convinced that Pacific's hypothetical situation, whereby the N-1 carrier would not perform any queries and the original terminating LEC would thus have to perform all the queries not performed by the originating LEC, will arise often. The industry already appears to favor using the N-1 scenario, under which the N-1 carrier performs the database query, as indicated in the majority of comments on call processing scenario issues received pursuant to the original Notice of Proposed Rulemaking.⁴²¹ The vast majority of interLATA calls are routed through the major interexchange carriers,⁴²² and the two largest interexchange carriers, at least, claim they plan to deploy portability as soon as possible.⁴²³ Therefore, most interLATA calls will be queried by the major interexchange carriers, not the incumbent LECs. Moreover, as we stated in the First Report & Order, we wish to allow carriers the flexibility to choose and negotiate among themselves which carrier shall perform the database query, according to what best suits their individual networks and business plans.⁴²⁴ Finally, we decline to address Pacific's argument that, if the terminating carrier is forced to perform queries, that would violate our fourth performance criterion.⁴²⁵ Since we are eliminating our fourth performance criterion,⁴²⁶ Pacific's argument is moot.

126. We clarify, however, per NYNEX's request, that if an N-1 carrier is designated to perform the query, and that N-1 carrier requires the original terminating LEC to perform the query, then the LEC may charge the N-1 carrier for performing the query, pursuant to guidelines the Commission will establish in the order addressing long-term number portability cost allocation and recovery.

⁴²¹ First Report & Order, 11 FCC Rcd at 8376.

⁴²² Percentage of Total Toll Service Revenues for 1995: AT&T 45.8%; MCI 15.4%; Sprint 8.7%; LDDS 4.3%; all other carriers 12.2%; LECs 13.5%. Table 1.4 Statistics of Communications Common Carriers, Federal Communications Commission, 1995/1996 ed. The preceding figures actually understate the interexchange carriers' share of interLATA traffic, because the percentages are based on total toll traffic, which includes (particularly in the case of the BOCs) a large measure of intraLATA toll.

⁴²³ See MCI Opposition at 19 (claiming that interexchange carriers have a powerful incentive to escape access charges); AT&T November 12, 1996 Ex Parte Filing at 1; MCI Ex Parte Presentation at 1, CC Docket No. 95-116, filed Nov. 6, 1996 (MCI November 6, 1996 Ex Parte Filing).

⁴²⁴ First Report & Order, 11 FCC Rcd at 8384.

⁴²⁵ See Pacific Petition at 13.

⁴²⁶ See supra ¶ 19.

C. Implementation Schedule for Wireless Carriers

127. Background. In the First Report & Order, we required all cellular, broadband PCS, and covered SMR carriers⁴²⁷ to have the capability of querying the appropriate number portability database systems in order to deliver calls from their networks to ported numbers anywhere in the country by December 31, 1998.⁴²⁸ These wireless carriers may implement the upgrades necessary to accomplish the queries themselves, or they may make arrangements with other carriers to provide that capability.⁴²⁹ In addition, wireless carriers subject to our rules are required to offer service provider portability throughout their networks, including the ability to support roaming, by June 30, 1999.⁴³⁰ In the First Report & Order, we delegated authority to the Chief, Wireless Telecommunications Bureau, to waive or stay any of the dates in the implementation schedule for a period not to exceed nine months, and to establish reporting requirements in order to monitor the progress of wireless carriers.⁴³¹ In the event a carrier subject to these requirements is unable to meet the Commission's deadlines for implementing a long-term number portability method, it must file a petition to extend the time by which implementation must be completed with the Commission at least 60 days in advance of the deadline, along with an explanation of the circumstances and the need for such an extension.⁴³²

128. Pleadings. Several parties urge the Commission to modify the number portability implementation schedule set forth in the First Report & Order for CMRS providers. AirTouch and GTE reason that the wireless industry is behind the wireline industry in considering how to implement number portability and, moreover, faces special technical challenges.⁴³³ These parties assert that wireless carriers need to resolve various technical issues before implementing number portability, including establishing the standard

⁴²⁷ The term "covered SMR" means either 800 MHz and 900 MHz SMR licensees that hold geographic area licenses or incumbent wide area SMR licensees that offer real-time, two-way switched voice service that is interconnected with the public switched network, either on a stand-alone basis or packaged with other telecommunications services. This term does not include local SMR licensees offering mainly dispatch services to specialized customers in a non-cellular system configuration, licensees offering only data, one-way, or stored voice services on an interconnected basis, or any SMR provider that is not interconnected to the public switched network. 47 C.F.R. § 52.1(c). We note that several parties have petitioned for reconsideration of the definition of "covered SMR." We will address this issue in a subsequent order.

⁴²⁸ First Report & Order, 11 FCC Rcd at 8439; 47 C.F.R. § 52.11(b).

⁴²⁹ First Report & Order, 11 FCC Rcd at 8439-40.

⁴³⁰ Id. at 8440; 47 C.F.R. § 52.11(a).

⁴³¹ First Report & Order, 11 FCC Rcd at 8440-41; 47 C.F.R. § 52.11(c), (e).

⁴³² First Report & Order, 11 FCC Rcd at 8441; 47 C.F.R. § 52.11(d).

⁴³³ AirTouch Petition at 14-16; GTE Petition at 21-23; see also CTIA Petition at 5-7; SBC Petition at 12-13.

for the intelligent wireless network, and redesigning network protocols and support systems.⁴³⁴ GTE urges the Commission to allow enough time for wireless carriers to test thoroughly number portability to ensure network integrity.⁴³⁵

129. AirTouch, CTIA, and SBC argue that the Commission should not limit to nine months the authority of the Chief, Wireless Telecommunications Bureau, to grant extensions of the schedule set forth the First Report & Order.⁴³⁶ CTIA argues that the nine-month period within which the Chief, Wireless Telecommunications Bureau, may waive or stay the schedule is arbitrary because it is unsupported by the record, is not predicated on any analysis of industry's ability to comply with the schedule, and may not allow industry and the Wireless Telecommunications Bureau enough time to determine CMRS carriers' ability to comply.⁴³⁷ GTE urges the Commission to repeal the deadlines set forth in the First Report & Order altogether and instead establish target dates.⁴³⁸

130. BANM and CTIA claim that the schedule for CMRS providers is stricter than that for wireline service providers because CMRS providers must provide number portability in areas outside the top 100 MSAs, even if it is not requested.⁴³⁹ CTIA urges the Commission to clarify whether, in addition to supporting nationwide roaming of CMRS customers with ported numbers, CMRS providers must implement full number portability in every market throughout the nation, or in only the largest 100 markets and any market where number portability is requested, by June 30, 1999.⁴⁴⁰ If the Commission requires full number portability in all markets, CTIA argues, then the wireless schedule should be conformed to the wireline schedule so that CMRS providers need only provide full number portability in the largest 100 MSAs by December 31, 1998, and, thereafter, in smaller markets upon creation of a regional database that includes both LEC and CMRS numbers.⁴⁴¹

131. CTIA also reasons that, if a LEC does not provide number portability in an area, a regional database for that area may not exist, and the CMRS providers would have to

⁴³⁴ AirTouch Petition at 15-16; GTE Petition at 22-23.

⁴³⁵ GTE Petition at 22-24.

⁴³⁶ AirTouch Petition at 13-14; CTIA Petition at 7-8; SBC Petition at 13-14. See also RCA Reply at 2-3; RTG Comments at 3-5.

⁴³⁷ CTIA Petition at 5-7. See also RCA Reply at 5; RTG Comments at 5.

⁴³⁸ GTE Petition at 24.

⁴³⁹ BANM Petition at 8; CTIA Petition at 2. See also RCA Reply at 2-3; RTG Comments at 3-4.

⁴⁴⁰ CTIA Petition at 3. See also RCA Reply at 2-3; RTG Comments at 3-5.

⁴⁴¹ CTIA Petition at 3-5.